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or Degrading Treatment
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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 331st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 May 1998, at 4.20 p.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.331.

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The public part of the meeting was called to order at 4.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Peru (continued) (CAT/C/20/Add.6)

1. At the invitation of the Chairman, Mr. Quispe-Correa, Mr. Reyes-Morales, Mr. Ibazeta-Marino, Mr. Garcia-Godos-McBride, Mr. Garcia-Revilla, Mr. Chávez-Basagoitia and Mr. Chávez-Lobatón (Peru) resumed their places at the Committee table.

2. Mr. QUISPE-CORREA said that no systematic policy of torture existed in Peru. On the contrary, the Peruvian Government condemned such action and had punished perpetrators, assisted victims such as Leonor La Rosa, and enacted legislation to prevent any recurrence. The Peruvian Government's commitment to implementing the Convention was demonstrated by his own presence, in his capacity of Minister of Justice, before the Committee. By way of example, two specific cases where members of the armed forces had been charged with acts of torture, committed against Palomino García Mario and Leonor La Rosa respectively, had led to the trial and imprisonment of five officers and three non-commissioned officers, in the former case, and of five intelligence officers in the latter, which was indicative of the Government's determination to eradicate and punish human rights violations.

3. The Executive Commission of the Judiciary, composed of three Supreme Court judges and one Executive Secretary, replaced a series of bodies which had successively proved unable to overcome the managerial deficiencies responsible for recurring institutional crises. The model had proved so successful in effecti..g judicial reform that it had likewise been introduced in the Public Prosecutor's Office. Since the Executive Commission neither nominated judges nor appointed them to the jurisdictional bodies, it did not constitute a threat to the independence of judges.

4. The system of confirming judges in their posts every seven years was a deep-rooted tradition enshrined in the successive Constitutions of Peru. Its intention was to ascertain periodically that judges were carrying out their functions satisfactorily, and certainly not to intimidate them or compromise their independence. Efforts were being made to curb the excessive turnover of judges.

5. The procedural guarantees regarding the inadmissibility of evidence obtained under torture provided that under criminal law the Public Prosecutor must sign a report on the findings of inquiries conducted under his authority by the police before a judge could accept it as evidence. Even then, if it could be shown that such evidence had been obtained under torture, it was not admissible, and any inconsistency found between a confession and other circumstances relating to the case ruled it out as evidence.

6. Regarding detention, the Constitution laid down that a person could not be arrested without a warrant except in flagrante delicto, and must appear

before the judge within 24 hours. The sole exception, where pre-trial detention could be extended to a maximum of 15 days, was for cases of terrorism, espionage and drug trafficking.

7. In cases where it had become impossible, as a consequence of a declaration of amnesty, to identify and punish perpetrators of acts of torture, and require the payment of adequate compensation, the victim could demand reparation from the Government, as answerable for the actions of its civil servants, through a criminal indemnity action. Anti-terrorist legislation was being made more flexible as the pacification process in Peru advanced. The personal safety of victims and witnesses in any criminal proceeding, whether in a military or civil court, was guaranteed, under the rules of due process.

8. Regarding judicial rehabilitation, article 6 of the Penal Code stipulated that anybody who had served the sentence or met the conditions imposed was automatically rehabilitated. The Supreme Court had recently approved a procedure whereby any prisoner who had been granted a pardon under the Government's new resolution would automatically be released when it was published in the Official Gazette. Law 24973 regulated the matter of compensation for the victims of miscarriages of justice and of arbitrary detention as defined in the Constitution, and for anybody held in pre-trial detention in excess of the legal period. The Committee would be furnished with a copy of the Law.

9. The dismissal of three members of the Constitutional Court had not affected its supervisory activities in connection with the procedure whereby litigants could lodge a complaint with the courts for any violation of their fundamental rights and were guaranteed a timely and effective response by the justice system. The Court had continued, likewise to interpret the Constitution; under article 138, second paragraph, in the event of incompatibility constitutional provisions prevailed over legal provisions.

10. Despite the resignation and replacement by their alternates of members of the National Council of the Judiciary in response to the enactment of Law 26993 which, in their view, curtailed their prerogatives, the Council had retained its function of imposing the penalty of dismissal upon judges and procurators at all levels. In response to the bill submitted by the new members of the Council, the President of the Republic had stated that Law 26993 could be improved upon through legislative debate. Bills amending existing laws could be submitted through the Council and subsequently published in the Official Gazette, which furthered broad discussion and subsequent fine-tuning of legislation without prejudice to the second hearing principle, which was embodied in the Constitution.

11. The Constitution provided for the existence of military courts. In Peru, as in other countries, the objective of military law was to maintain discipline, all the functions of military courts were confined to cases assigned to them by the Supreme Court; cases where offences were committed in the execution of the mission assigned to the armed forces or the national police and cases relating to the laws governing military duty. Hence, the military courts were not isolated from the national judicial system.

12. An institute within the justice sector was responsible for prison administration; its director was a lawyer with expertise in penology and the rehabilitation staff consisted of civilians, including female staff who were responsible for the female inmates. Police duties were restricted to external security. Challapalca Prison, which was located in a heavily populated area, was exclusively for dangerous common criminals, and only one quarter of its capacity was occupied. The staff included a doctor, a dentist, a psychologist, etc.

13. The Ad Hoc Commission had originally been established to examine applications by individuals who had been found guilty of terrorism and who considered that their sentences were unjust or excessive. Its purview had latterly been broadened to include applications by "repentants". Convicted terrorists might receive a presidential pardon and "repentants" a commuted sentence. Abuses of the type to which non-commissioned officer Leonor La Rosa had been subjected were also punishable, and the instances cited demonstrated that members of the armed forces were indeed being brought to book.

14. The circumstances in the case of the non-commissioned officer Zanatta were that, having left the country without the leave of his commanding officer, he had become liable to administrative penalties and legal proceedings under military criminal law. However, action had been taken to grant him the necessary guarantees enabling him to return to Peru to settle his legal situation and assist in identifying the culprits. In the Yurinaqui case, suspected terrorists had been apprehended in the course of counterinsurgency operations. As a result, groups of subversives had been broken up, a large weapons cache had been seized and a plan to attack the counterinsurgency base at Oxapampa in February 1997 had been foiled.

15. The military had been careful to respect the human rights of the persons they had detained. Representatives of the Office of the Public Prosecutor and delegates from the International Committee of the Red Cross had monitored the detainees' health. The former had also taken part in investigations into the affair at Yurinaqui and had issued medical certificates which refuted the allegations of torture. The duration of pre-trial detention was in accordance with statutory limits applicable to persons accused of acts of terrorism.

16. Peru was party to the 1954 Caracas Convention on Diplomatic Asylum which thus provided the framework for its asylum policy. Peru had a long tradition of granting asylum and had consistently maintained the principle of non-refoulement: a person would never be sent back to a country where he or she might face persecution and asylum seekers were not sent back to their country of origin.

17. A multi-sectoral commission was responsible for dealing with applications for refugee status. All applications were submitted by UNHCR through the Catholic Commission, which acted for it in such cases.

18. The delegation had noted the Committee's concern about the delay in submitting its periodic report and the fact that the report was not strictly in accordance with the Committee's guidelines on form of presentation. Peru intended to ask the Office of the United Nations High Commissioner for Human Rights for technical assistance in training the staff responsible for drafting

the periodic reports. Peru was still in the process of strengthening national institutions, including the public administration, which inevitably made it difficult to compile the information needed and present it in the proper form. Peru was one of the few countries that were up to date with regard to reporting obligations, despite the difficulties it faced.

19. Peru was taking time to consider making the declarations under articles 21 and 22 of the Convention, a matter that should not be rushed into. The Supreme Court was responsible for deciding which instrument took precedence in the event of a conflict between domestic law and treaties to which Peru was a party. With regard to the amnesty law No. 26,479 of 14 June 1995, cases of torture had been investigated and victims compensated in civil courts. No individuals found to be victims of torture would be left without compensation inasmuch as the State was responsible for the behaviour of its officials and thus for providing reparation for misconduct.

20. The delegation of Peru withdrew.

The public part of the meeting was suspended at 4.55 p.m. and resumed at 5.50 p.m.

21. At the invitation of the Chairman, the members of the delegation of Peru resumed their places at the Committee table.

22. The CHAIRMAN informed the delegation of Peru that the Committee had regrettably been unable, owing to time constraints, to complete its conclusions and recommendations at the current meeting. He invited the delegation to return at 3 p.m. the following day.

23. Mr. QUISPE-CORREA (Peru) said that the cordial reception given to his delegation had created the necessary conditions for a dispassionate and productive dialogue. Noting that the crusade for human rights involved all nations and individuals, he assured the Committee that every effort would be made to give effect to its recommendations.

The meeting rose at 5.55 p.m.